

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHTONE DESIGN GROUP, LLC,

Plaintiff/Counter-Defendant,

- against -

Mary Sullivan KELLY and TRUE
PILATES BOSTON, LLC,

Defendants/Counter-Plaintiffs/
Third-Party Plaintiffs,

Case No. 22-cv-1606-KMK

- against -

RICHTONE DESIGN GROUP, LLC,

Counterclaim Defendant,

and

Sean GALLAGHER,

Third-Party Defendant.

Declaration of Heather Erdman

Heather Erdman, being a person over the age of 18 and otherwise competent to testify as to the matters set forth herein, declares as follows:

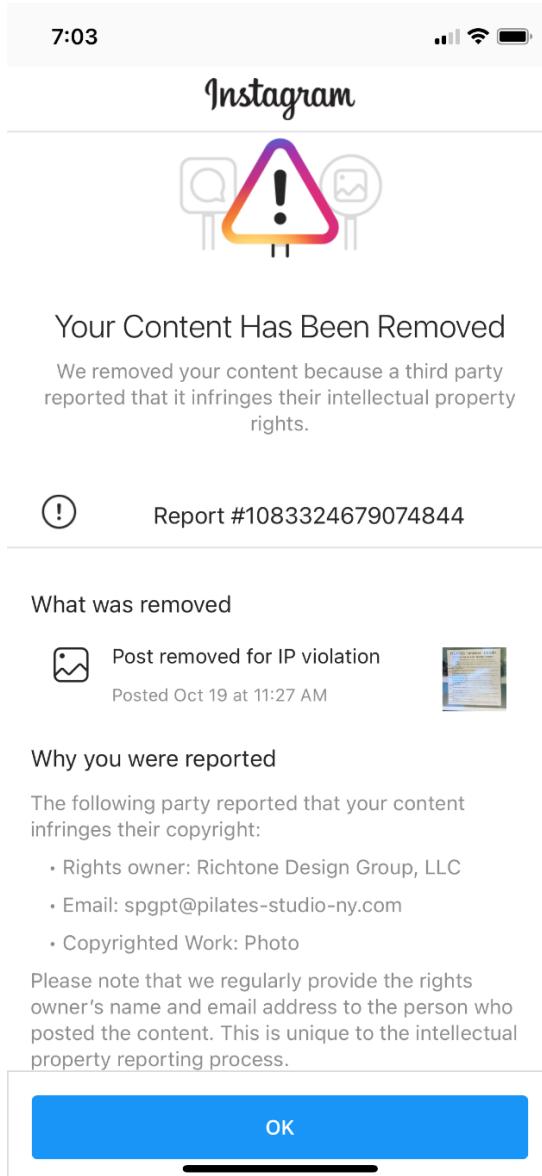
1. I am a Pilates educator who owns and runs Pure Body Studio and Pure Body Teacher Training, a Pilates studio and education company that, among other

things, provides teacher training to Pilates instructors. I was trained both in contemporary and “classical” styles of Pilates. Pure Body’s course involves 158 face-to-face workshop hours, 600 study hours outside of those workshops, and a scientifically based approach to Pilates.

2. On October 19, 2021, I posted images of a handmade book that I found in the New York Public Library which appeared to me to have been created to advertise and sell the “Wunda Chair,” one of the essential pieces of equipment designed by Joseph Pilates to practice certain of his exercises. A copy of the book, which contains pasted-in photographs showing Joseph Pilates demonstrating various positions on his apparatus, and text extolling the value of the apparatus, is filed herewith as Exhibit 1. The book appeared to me to be a combination of an advertisement for the Chair and catalog of the exercises that might be performed on it by whoever purchased one.

3. The book was in the library’s collection of papers of Carola Trier, who had studied the Pilates method with Joseph Pilates. I had never seen the images before and was excited to share what I found with my Instagram followers.

4. A day or two later, I received a message from Sean Gallagher stating that “because they are copyrighted as are most of the Joe pictures in Carola’s collection in the library. I am letting you know you do not have permission to share and or use them.” I ignore his message, as he provided no information regarding his alleged ownership. The message from Gallagher is shown below at left.



5. On or about October 22, 2021, I received a notice from Instagram that my post of the Wunda Chair book had been removed due to a DMCA takedown notice filed by Gallagher, spgpt@pilates-studio-ny.com. The notice is shown above at right.

6. On October 23, 2021, I posted a “Story” on Instagram with the Wunda Chair images in a carousel-style post. The “Story” was promptly removed, again due to a Gallagher DMCA takedown notice. The notice appears below.

9:51

Instagram

Your Content Has Been Removed

We removed your content because a third party reported that it infringes their intellectual property rights.

Report #1557985414581909

What was removed

Story removed for IP violation
Posted Oct 23 at 6:52 PM

Why you were reported

The following party reported that your content infringes their copyright:

- Rights owner: Sean Gallagher and Richtone Design Group LLC
- Email: Spgpt@pilates-studio-ny.com
- Copyrighted Work: Photo

Please note that we regularly provide the rights owner's name and email address to the person who posted the content. This is unique to the intellectual

9:52

Instagram

The following party reported that your content infringes their copyright:

- Rights owner: Sean Gallagher and Richtone Design Group LLC
- Email: Spgpt@pilates-studio-ny.com
- Copyrighted Work: Photo

Please note that we regularly provide the rights owner's name and email address to the person who posted the content. This is unique to the intellectual property reporting process.

If you believe this content shouldn't have been removed, you can contact the complaining party directly to resolve your issue. Alternatively, you may submit an appeal by filling out [this form](#).

Copyright guidelines

You can only post content to Instagram if it doesn't violate the intellectual property rights of another party, including **copyright**. The best way to ensure your content doesn't violate copyright law is to only post content you've created yourself. Your use of someone else's content may still be infringing their copyright, even if you:

- Give credit to the copyright owner
- Disclaim that you don't intend to infringe copyright
- Modified the work or added your own material
- Found the content on the internet

If you repeatedly post content that infringes someone else's intellectual property rights, your account may be disabled under Instagram's repeat [infringement policy](#).

Next

7. On or about November 2, 2021, Instagram deleted my Instagram account. A copy of an email I received from Instagram is shown below.



Instagram

My Instagram Account Was Deactivated #1261337637714932

To: Heather Erdmann,
Reply-To: Instagram

Inbox - gmail November 4, 2021 at 6:39 AM

Hi,

As a user of Facebook, you have agreed to our Terms of Service, which states that users are prohibited from taking any action on Facebook that infringes or violates someone else's rights or otherwise violates the law. When we receive a proper claim of intellectual property rights infringement, we promptly remove or disable access to the allegedly infringing post. We also terminate the accounts of repeat infringers in appropriate circumstances.

We previously warned you that if you continued to infringe the rights of third parties, we would terminate your account. Accordingly, your account has been disabled and you are no longer permitted to use Facebook.

Thank you for your cooperation,

Jooao
Instagram

On Tue Nov 2, 2021 20:19:40, original message wrote:

The Instagram Team received an appeal from you, and we will look into your matter shortly. For reference, your appeal reference number is: 1261337637714932.
Thanks,

The Instagram Team

8. Several weeks later, I received a letter from Charles Knull dated November 16, 2021. Mr. Knull stated that he represented “Sean Gallagher and Richtone Design Group, LLC dba Sean Gallagher’s Pilates Archives™ and Pilates Source™.” The letter attempted to argue Gallagher’s legal position, citing the Copyright Act and case law, but what struck me was Mr. Knull’s stark warning to stay away from publishing *any* image depicting Joseph Pilates, except those that were published by Joseph Pilates during his lifetime. After he mentioned that a tiny handful of images that were published during Joseph Pilates’ lifetime – for example, the *Return to Life* book containing photographs by fashion photographer George Hoyningen-Huene, Mr. Knull stated: “One cannot be certain that any other work is available in the public domain and runs the risk of infringement by copying.”

9. I believe the reason he told me this is because his clients have never provided anyone with an inventory of what they claim to own and, consequently, no one knows what they claim to own until they send a cease-and-desist or DMCA takedown notice.

10. The “takeaway” from Mr. Knull’s statement was that whatever may be available from libraries, archives, and private individuals, if I post it or share it, Gallagher will claim to own it. A copy of Mr. Knull’s letter is filed herewith as Exhibit 2.

11. I have been seeking out and viewing private collections of photographs of Joseph and Clara Pilates since 2008. In 2017, I began researching online at the Library of Congress, the Leo Baeck Institute, the New York Public Library, archival videos on YouTube, archival magazine collections, online book depositories, the Internet Archive, and other sources. I visited the New York Public Library, which maintains various collections in the field of dance, in September, October, and November 2021, February 2022, and April 2022. Images of Joseph Pilates frequently appear in dance collections because many of his clients were dancers.

12. In my research, I have probably seen over a thousand images of Joseph Pilates, including many hundreds in which Mr. Pilates is demonstrating his exercises on various pieces of apparatus of his design.

13. These images are extremely important to Pilates instructors because Joseph Pilates taught by doing, working hands-on with clients. These images, like the ones in *Return to Life*, are the original records of his exercises and method.

14. Gallagher’s intention in sending takedown notices is clearly to create a climate of fear in which everyone is afraid to share these important works, because, as Mr. Knull warned, no one can be sure what Gallagher or his companies might claim to own – until they receive a nasty text message or takedown notice, or have

their social media accounts deleted. In this way, Gallagher seems to believe that he can control an industry or at least monopolize information about Joseph Pilates and his method. If it weren't for Gallagher, historical images of Joseph Pilates would be in wide, public, and free circulation.

15. In late November 2021, as I was planning a visit to the New York Public Library ("NYPL"), I was informed by Linda Murray, a Curator for the Library's Jerome Robbins Dance Division, Collections & Research, that the NYPL "received a query into the rights of the Pilates material spread across multiple collections," which query necessitated a prohibition on taking photographs. The complainant was certainly Sean Gallagher.

16. However, in a follow-up email, Ms. Murray stated that after investigation, the Library "has determined that these collections can be opened to personal research photograph again." She also noted that although Library policies may allow personal photographs to be taken, "responsibility for the use of those images remains the responsibility of the patron." My correspondence with Ms. Murray is filed herewith as Exhibit 3.

17. The only person preventing me, and others, from making photographs of, and using the images in the Library is Sean Gallagher and his company, Richtone.

18. Although Mr. Knull suggested in his letter to me that works published during Joseph Pilates' lifetime would be in the public domain, that has not stopped Gallagher from claiming that publications bearing copyright notices were

nevertheless “unpublished” and therefore owned by Gallagher or Richtone.

19. Upon information and belief, Gallagher claims to be the copyright owner of a brochure entitled *Return to Life through Contrology*, a copy of which is filed herewith as Exhibit 4. Page 2 contains a copyright notice, “Copyright 1957 by The American Foundation for Physical Fitness,” and the last page states “Printed in the United States of America by G. Schirmer & Company.”

20. I saw multiple copies of this brochure in various collections at the New York Public Library. With my cellphone, I photographed the back cover of the copy that was in the Carola Trier collection, which bore the inscription, “This is Copy Number 27 for Carola Strauss Trier.” I also photographed a letter to Trier, dated October 9, 1957, which states that “Shortly you should receive inscribed Copy Number 27” of the brochure” and talks about “[t]he importance of this publication at this time.” Copies of the back cover and letter are filed herewith as Exhibit 5.

I hereby state under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed at Houston, Texas, this 7th day of March 2023.

By: 
Heather Erdman